

The Gazette of India

EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY

No. 216] NEW DELHI, TUESDAY, AUGUST 18, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 6th August 1953

S.R.O. 1591—Whereas the election of Shri A K Subbaraya Goundar as a member of the Legislative Assembly of the State of Madras, from the Kangayam constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri V Muthusamy Gounder son of Shri Varadappa Gounder of Varadappa Goundanpudur, Kangayam Post, Dharapuram Taluk, Coimbatore District, Madras State;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission,

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal

BEFORE THE ELECTION TRIBUNAL, COIMBATORE

PRESENT

Sri E Antony Lobo, MA (Oxon), Bar-at-Law—*Chairman*

Shri M Venkatasubbiah, BA, BL—*Member*

Sri K Nanjundiah, BA, B Com., B.L.—*Member*

Friday, the 28th day of November, 1952

ELECTION PETITION No. 1 of 1952

(Election Petition No 31 of 1952 Election Commission, India)

Sri Muthuswami Goundar son of Varadappa Goundar aged 42, ryot, residing at Varadappa Goundanpudur, Kangayam Post Dharapuram Taluk.
—*Petitioner*

Versus

Sri A K Subbaraya Goundar son of Krishnaswami Goundar, aged 45, residing at Avanashigoundanpudur, Kangayam Post, Dharapuram Taluk.—*Respondent*.

Petition dated 29th February 1952 under Section 81 of the Representation of the People Act, 1951 praying that the election of the respondent to the Madras State Assembly from the Kangayam Constituency be declared wholly void and that fresh election be ordered.

This petition having been heard on the 21st and 27th days of November 1952, upon perusing the petition, counter and other connected papers in the case and upon hearing the arguments of Sri C. R. Ramaswami Ayyar, Advocate for the petitioner and Messrs K. Raja Ayyar, K. S. Ramamurthi and C. P. Meenakshisundara Sastriar, Advocates for the respondent and having stood over to this day for consideration, the Tribunal made the following:

ORDER

This is a petition presented under section 81 of the Representation of the People Act, 1951 questioning the validity of the election of the respondent to the Madras Legislative Assembly from the Kangayam General Constituency which is a single member constituency.

2. The material averments of the petition are as follows: The petitioner and the respondent were the two candidates for the election to the Madras Legislative Assembly from the Kangayam General Constituency. In the usual course the petitioner filed his nomination papers, two in number on 20th November 1951. He also filed two forms known as 5-A Forms under which the petitioner appointed one Raja Muhammad Hussain as his election agent. But the Returning Officer, Erode before whom the above papers were filed returned one of the 5-A Form to the petitioner stating that one form was sufficient. The Returning Officer scrutinised the nomination papers filed by the petitioner, and after asking him to make some corrections he stated to the petitioner that the papers were in order and requested him to see him on 28th November 1951 which was the day of the scrutiny of the nomination papers. On 28th November 1951, the petitioner and the respondent appeared before the Returning Officer, when again the Returning Officer scrutinised the nomination papers and told the petitioner that the nomination papers were in order, and the petitioner left the Returning Officer. A little later, the Returning Officer told the petitioner that his nomination papers were rejected on the ground that the petitioner did not sign the declaration in the nomination papers relating to the appointment of the election agent.

3. The petitioner contends that there was no necessity for a declaration regarding the appointment of an election agent by him, that the filing of the 5-A Form appointing an election agent obviated the necessity of a separate declaration, that in any event the defect was a technical one which would not affect the validity of the nomination and that in the circumstances, the Returning Officer was not justified in rejecting the nomination papers of the petitioner. The petitioner further contends that after the rejection of the nomination papers of the petitioner, the respondent's name alone was published on 1st December 1951 as a candidate nominated for the election, and on the same day the Returning Officer also declared the respondent as having been elected to the above mentioned Constituency unopposed on account of the invalidation of the petitioner's nomination papers. The petitioner alleges that the rejection of the petitioner's nomination papers by the Returning Officer was not proper and was invalid and that in the circumstances the election of the respondent must be set aside and a fresh election must be ordered.

4. The respondent opposes the petition on the following grounds: The respondent does not admit and also denies that the petitioner filed two 5-A Forms before the Returning Officer, that the Returning Officer said that one of the forms was enough and returned the other form to the petitioner and that the Returning Officer told the petitioner on 20th November 1951 on the day of the filing of the nomination papers, and on 28th November 1951, on the day of the scrutiny of the nomination papers orally that the nomination papers filed by the petitioner were in order. At the time of the scrutiny of the nomination papers on 28th November 1951, objections were raised by the respondent, and the Returning Officer on a scrutiny of the papers found that the petitioner did not sign in any of the two nomination papers the declaration relating to the appointment of an agent and held that the nomination papers of the petitioner were invalid as not having complied with the provisions of section 33(3) of the Act. The filing of the 5-A forms cannot dispense with the necessity of the declaration required under section 33(3) of the Act. The defect noticed in the nomination papers of the petitioner is a substantial defect and the Returning Officer was right in rejecting the nomination papers of the petitioner.

5. The following issue was framed for determination:

Whether the rejection of the nomination papers of the petitioner by the Returning Officer is not valid?

6. Exs. A-1 and A-2 are the two nomination forms filed by the petitioner before the Returning Officer. Under Section 40 of the act, the candidate shall before the delivery of his nomination paper appoint in writing either himself or some one other person to be his election agent. Under Rule 11-A of the Rules framed under the Act the appointment shall be made in Form 5-A. Ex. A-3 is the form filed by the petitioner before the Returning Officer wherein the petitioner appoints one Raja Muhammad Hussain as his election agent. Ex. A-4 is the order by which the Returning Officer rejected the nomination papers of the petitioner. The petitioner's Advocate very properly did not choose to substantiate before us by oral evidence the allegations made against the Returning Officer that the petitioner filed two 5-A Forms and the Returning Officer returned one of them to the petitioner and that the Returning Officer scrutinised the nomination papers on 20th November 1951 and 28th November 1951 and told the petitioner that the papers were in order, thereby lulling him into a sense of security.

7. Under Section 33(3) of the Act, every nomination paper delivered shall be accompanied by a declaration in writing subscribed by the candidate that he has appointed his election agent. Under Rule 5(2) of the Rules, the candidate shall make a declaration specifying the choice of the symbols to be adopted for the election. Under Rules 4, the nomination paper shall be completed in the form specified in Schedule II. The nomination paper includes the two declarations which have to be made under section 33(3) and Rule 5(2). Two places are indicated in the nomination printed form for his signature in respect of the two declarations mentioned above. Under section 33(1) of the Act, the candidate shall subscribe his assent to the nomination. The nomination paper provides a place for the signature of the candidate giving his assent to the nomination. In the two nomination papers Exs. A-1 and A-2, the petitioner signed in token of his assent to the nomination and also signed immediately below the declaration relating to the choice of symbols. He has not affixed his signature above the words "*apekshakalim Kai ezhuttu*" relating to the declaration of the appointment of his election agent. The Returning Officer held that the declaration relating to the appointment of an election agent ought to have been separately signed by the petitioner above the words mentioned above, and as he did not do so, he violated the provision of section 33(3) of the Act and therefore rejected the nomination papers under section 36(2)(d) of the Act.

8. It is contended for the petitioner that it was not necessary for the petitioner to have signed separately the declaration relating to the appointment of an agent in the nomination papers, that his signature below the declaration relating to choice of the symbols might be taken as a signature to cover the declaration relating to the appointment of an agent also and therefore there was a compliance with the provisions of section 33(3) and that, even if a separate signature were necessary for the declaration of the appointment of an agent, the defect in the nomination papers is technical and is not of a substantial character and the Returning Officer was not justified in rejecting the nomination papers on that account under section 36, sub-section (4) of the Act which states that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character.

9. It was argued before us for the petitioner that a declaration under section 33(3) was unnecessary in view of the fact that the petitioner appointed an election agent in Form 5-A prescribed therefor. We cannot agree with this contention, having regard to the express provision in section 33(3) that a declaration in writing relating to an appointment of an election agent should accompany every nomination paper. The appointment of an agent is different from a declaration to the Returning Officer that the candidate has appointed an election agent. We therefore hold that a separate declaration about the appointment of an election agent should accompany every nomination paper. In this particular case, the nomination paper itself contains the declaration without a separate declaration in writing being filed along with the nomination paper.

10. The first question for consideration is whether the petitioner has made a declaration in writing subscribed that he has appointed an election agent. On this question, we agree with the contention for the respondent that the declaration necessary under section 33(3) requires the signature of the candidate. The petitioner's Advocate argued that the signature below the declaration relating to choice of symbols must be taken to cover the declaration regarding appointment of an agent. There is no principle of law which prevents one signature covering more than one declaration. In the nomination forms Exs. A-1 and A-2 supplied by Government which are in Tamil, the wording of the declaration about the

appointment of an election agent and the wording of the declaration regarding choice of symbols is identical, and this wording differs from the language of the assent which the candidate gives to his nomination wherein the words "nru idanl nōn urudi kooragīru" do not appear in the other two declarations. We have therefore no hesitation in accepting the contention for the petitioner that the signature below the declaration as to choice of symbols covers also the declaration above it relating to the appointment of an election agent.

11. It was, however, argued for the respondent that inasmuch as the place was indicated in the nomination paper for a signature relating to the declaration about the appointment of an election agent, the signature below the declaration about the choice of symbols cannot be deemed to relate to the declaration about the appointment of the election agent. We are not much impressed with his argument. A perusal of the nomination forms will clearly show that a lot of matter has been cramped into a single page and one is likely to miss the words above which the signature of the candidate has to be affixed relating to the declaration about the appointment of an agent.

12. The next question is whether if the declaration about the appointment of an agent requires a separate signature at the place indicated in the nomination form Exs. A-1 and A-2, the defect in Exs. A-1 and A-2 is a technical one which is not of a substantial character. It must be noted that in this case the petitioner did appoint an election agent in the form prescribed i.e. in Ex. A-3. He has also filled in the declarations necessary in the two nomination papers, Exs. A-1 and A-2, by mentioning the name of the agent appointed by him. It can therefore be held that the petitioner has made the declaration necessary under section 33(3); the only defect being that he has not signed in the place indicated as mentioned above. Looking at the matter from all angles of vision, we are of opinion that the defect, if any, is certainly a technical one. We are also of the opinion that this technical defect is not of a substantial character, having regard to the fact that he has presented the 5-A Form properly filled up, and also filled up the declaration contained in the nomination papers mentioning the name of the agent.

13. The respondent's Advocate besides merely arguing that under section 33(3) the declaration was to be signed and the sub-section also stated that no candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper, was not able to impress upon us that the defect was of a substantial character, going to the root of the matter. Even if the signature of the candidate is necessary for the declaration in section 33(3) the defect cannot be regarded as one of a substantial character, and it is open to us to hold under section 36(4) that the defect of want of signature at the place indicated in the nomination paper is not of a substantial character. It was argued for the respondent that section 36, sub-section (4) must be read subject to the provisions of sub-section (2) (d) of the same section. We are not inclined to accept this reasoning, having regard to the fact that sub-section (4) is an independent sub-section and there being nothing in section 36 to warrant the construction that sub-section (4) is governed by any of the previous sub-sections. On the other hand, it would appear to us that sub-section (4) which comes after sub-section (2) covers defects contemplated in sub-section (2) (d) also.

14. Some English authorities were quoted in support of the position that where a signature was necessary in a document prescribed by a statute, and where such a signature was absent in the document, the mere mention of the name of the person in many portions of the document would not be a substitute for the signature. We are of opinion that the analogy does not hold good. These were cases where no discretion was given to any officer or Court to decide whether the defect was either technical or of a substantial character so as to make the document a valid one. In the present case, there is a specific provision in section 36, sub-section (4) which enjoins that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character. On the other hand, a close analogy is a case mentioned in H. S. Doabia's book of Law of Elections and Election Petitions, second edition, 1952 page 299, paragraph 539 where the affixing of a rubber stamp which did not contain a facsimile but contained the mere name of the person who was a signatory and should have signed was held to be sufficient compliance of the provision relating to a document being signed in an election matter. We cannot by any stretch of imagination regard the affixing of a rubber stamp of the description we have mentioned as tantamount to signing a document in the strict sense of the term. In the present case it would not be a violent conclusion to hold that the

signature below the declaration relating to choice of symbols would also cover the declaration about the appointment of an election agent.

15. We are, therefore, of opinion that there is no defect in the nomination papers Exs. A-1 and A-2 filed by the petitioner as contravening the provisions of section 33(3) of the Act and even if there is a defect, it is a technical one which is not of a substantial character and is cured under section 36, sub-section (4). The issue is found in petitioner's favour. There can be no doubt that the result of the election declaring the respondent as elected as the only candidate has been materially affected on account of the improper rejection of the nomination of the petitioner. We declare that the election in question is wholly void. The petitioner will have his costs of this application from the respondent. We fix the Advocate's fee at Rs. 150.

Pronounced in open Court, this 28th day of November 1952.

(Sd.) E. ANTONY LOBO, *Chairman.*

(Sd.) M. VENKATASUBIAH, *Member.*

(Sd.) K. NANJUNDIAH, *Member.*

[No. 19/31/52-Elec.III/270.]

By Order,

P. R. KRISHNAMURTHY, *Asstt Secy.*

